IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Government Appeal NO. 10 of 2006
(Old No. 3143 of 1986)

Date of decision: 13th July, 2006

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

Date 13.7.2006

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 10 of 2006
(Old No. 3143 of 1986)

State …… Appellant

Versus

1. Rajpal Singh S/o Sri Bhagwan Singh
2. Veer Singh S/o Sri Pooran Singh
3. Km. Subodh D/o Sri Veer Singh
   All R/o Haripur Selakui,
   Police Station Sahaspur,
   District Dehradun. …….. Respondents

Mr. D.K. Sharma, Government Advocate for the appellant State.
Mr. Lokendra Dobhal, Advocate for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Rajeev Gupta, C.J. (Oral)

Appellant State has preferred this appeal against the impugned judgment dated 03.09.1986 passed by Ist Additional District & Sessions Judge, Dehradun in Sessions Trial No. 32 of 1984, whereby the respondents – accused persons Rajpal Singh, Veer Singh and Km. Subodh were acquitted of the charge punishable under Sections 306, 498-A and 302 read with 34 of the Indian Penal Code.

2. Respondent No. 2 Veer Singh is reported to have died during the pendency of the appeal. The appeal, so far as it is against the acquittal of respondent No. 2 Veer Singh, therefore, stands abated.

3. The short facts of the case, essential for deciding this appeal, are that Smt. Rama (since deceased) was married to respondent No.1 accused Rajpal Singh sometime in the year 1981. After few months of the marriage, respondent No. 2 accused Veer Singh, the Uncle of accused Rajpal Singh is alleged to have started harassing Smt. Rama and demanded a motorcycle and cash amount of Rs. 10,000/-. In the

above background, Smt. Rama, after having remained for few days at her brother's house, came back to her husband's place on 10.04.1983. On 12.04.1983, Smt. Rama sustained burn injuries and was admitted in the hospital for her treatment. Her sister PW1 Prem Lata, on getting information about the incident, first went to the house of Smt. Rama and on coming to know that she has been taken to the hospital for treatment, reached the hospital. In spite of the best efforts by the doctors, Smt. Rama could not be saved and she succumbed to her injuries next day on 13.04.1983. After performing the necessary formalities of preparing the inquest etc., the dead body was sent for post-mortem examination. The autopsy surgeon found extensive burn injuries on the body of the deceased and in his opinion, Smt. Rama died on account of shock due to ante-mortem burn injuries. The police, after completing the investigation, charge-sheeted respondents-accused persons Rajpal Singh, Veer Singh Km. Subodh for the alleged commission of the offence punishable under Section 306 of the I.P.C.

4. The respondents – accused persons abjured their guilt and pleaded that Smt. Rama sustained burn injuries accidentally while preparing tea.

5. From the records we gather that on 24.08.1984 initially charges under Sections 306 and 498-A only were framed against the accused persons and later on, after recording of the evidence of PW 1 Prem Lata, the charge under Section 302 read with 34 of the I.P.C. was also framed against the accused persons on 13.12.1984.

6. The above charges against the accused persons were sought to be proved on the evidence of PW1 Smt. Prem Lata, PW 2 Virendra Kumar Singh, PW3 Mohd. Haneef, PW4 Jagdish Singh, PW5 Suresh Chand Sharma, PW6 Virendra Pal Singh, PW7 Dr. A.K. Pande, PW8 Dr. D. M. Kala, PW9 Dr. R.C. Tiwari, PW10 Dev Dutt, PW11 Nathu Singh, PW12 Sohan Singh, PW13 Smt. Raj Kumari, PW14 Jagdish

Prasad, PW15 S.I. Sukhbir Singh, PW16 Smt. Shanti Devi and PW17 B.N. Acharya.

7. Of these, PW3 Mohd. Haneef, PW11 Nathu Singh, PW12 Sohan Singh, PW13 Smt. Raj Kumari and PW16 Smt. Shanti Devi did not support the prosecution case. These witnesses, therefore, were declared hostile and cross-examined by the prosecution.

8. The Trial Court, on a close scrutiny of the evidence led by the prosecution and the defence at the trial, found that the prosecution evidence fell short of establishing the above charges against the accused persons and therefore, recorded the impugned judgment of acquittal.

9. Mr. D.K. Sharma, the learned Government Advocate vehemently argued that the Trial Court has erred in discarding the prosecution evidence on flimsy and untenable grounds.

10. Mr. Lokendra Dobhal, the learned counsel for the respondents, on the other hand, supported the impugned judgment of acquittal and submitted that as the prosecution evidence suffered from serious infirmities, the Trial Court had no other option but to discard the prosecution evidence and to acquit the accused persons.

11. The facts that Smt. Rama was married to accused Rajpal Singh in the year 1981 and that Smt. Rama died on account of burn injuries sustained by her on 12.04.1983 were neither disputed before the Trial Court nor are under challenge before us in this appeal.

12. On a thorough scanning of the Trial Court’s judgment and the evidence led by the prosecution at the trial, we gather that the sheet-anchor of the prosecution case is the evidence of PW1 Prem Lata. She has deposed about the alleged oral dying declaration of deceased Smt. Rama to the effect that on the fateful day accused Veer Singh and Km.

Subodh set her on fire. The other incriminating circumstance sought to be relied upon by the prosecution against the accused persons is that the accused persons did not inform either the sister of the deceased or her brother about the deceased having sustained burn injuries on 12.04.1983.

13. So far as the oral dying declaration by deceased Smt. Rama is concerned, it is to be noted that neither in the First Information Report lodged by PW2 Virendra Kumar Singh, brother of the deceased, the fact of the above oral dying declaration in mentioned nor in the case diary statement of PW1 Prem Lata, any reference has been made to the said oral dying declaration. In view of the above material omission in the First Information Report and the case diary statement of PW1 Prem Lata recorded under Section 161 of the CrPC, the Trial Court has rightly discarded the evidence of the alleged oral dying declaration against the accused persons and we do not find any infirmity in the approach of the Trial Court in that behalf.

14. So far as the other alleged incriminating circumstance that the accused persons did not inform either the sister or the brother of the deceased about her having sustained burn injuries on 12.04.1983, suffice it to say that even according to the prosecution case, Smt. Rama was taken to the hospital by none-else but her husband accused Rajpal Singh himself. It has further come in the evidence of PW1 Prem Lata that she was informed about the incident by one Mohan Singh, who is neighbour of accused Rajpal Singh. It is also relevant here to mention that prosecution, itself, has led evidence to the effect that accused Rajpal Singh sustained burn injuries on his hand, which according to him, he sustained while trying to extinguish the fire with a view to save his wife. In the inquest memo (Ex. Ka. 5) prepared on 13.04.1983, it is mentioned that Smt. Rama sustained burn injuries while preparing tea.

15. Thus, on a re-appreciation of the entire evidence on record, we are satisfied that the findings recorded by the Trial Court leading to the acquittal of the respondents accused persons are based on proper appreciation of the evidence led by the prosecution at the trial. The learned State Counsel could not point out any such piece of legal evidence, which was not taken into consideration by the Trial Court while recording the impugned judgment of acquittal. Mere possibility of another view on the prosecution evidence will not, by itself, be sufficient to warrant interference in an appeal against acquittal.

16. For the foregoing reasons, the appeal against acquittal fails and is, hereby, dismissed. The impugned judgment of acquittal of the respondents – accused persons of the charges under Section 306, 498-A and 302 read with 34 of the Indian Penal Code is, hereby, maintained.

17. Respondents Nos. 1 & 3 Rajpal Singh and Km. Subodh are on bail. Their bail bonds shall stand discharged.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
13.07.2006 13.07.2006

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